



ID # 14834  
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# Texas Department of Health

Robert A. MacLean, M.D.  
Acting Commissioner

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RQ-322

January 27, 1992

FEB 04 92

Honorable Dan Morales  
Attorney General of Texas  
Price Daniel, Sr. Building  
209 W. 14th Street  
Austin, Texas 78701

Attn.: Opinion Committee

Re: Abortion Facility Information

Dear General Morales:

The Texas Department of Health administers the Texas Abortion Facility Reporting and Licensing Act, Health and Safety Code, Chapter 245. Section 245.011(d) pertains to the confidentiality of all information and records held by the department held under the Act. Your office has previously issued an opinion regarding this section. See JM-1144(1990).

An issue has arisen as to whether the department may release records relating to investigations at licensed abortion facilities to state agencies such as the Board of Medical Examiners or the Board of Nurse Examiners. During investigations the department may receive information concerning the alleged unprofessional or unethical conduct of a physician or a nurse. The department would like to be able to release information relating to that physician or nurse to the appropriate licensing agency for action as determined by that agency. Section 245.011(d)(3) allows release of information "to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter". Does "appropriate state agencies" include the Board of Medical Examiners and the Board of Nurse Examiners?

A second issue is whether the department can inform a person that an office, clinic, or facility is not licensed as an abortion facility. §245.011 clearly does not allow release of the identity of a licensed facility unless consent of the facility is obtained. If the department receives a request asking whether an office, clinic, or facility is licensed as an abortion facility and that office, clinic or facility is not so licensed, the fact that the department has no records on that office, clinic, or facility would seem to place the identity of the licensure status outside the confidentiality provisions in §245.011. May the department inform a requestor that an office, clinic, or facility is not licensed as an abortion facility?

If you require any further information, please contact Linda Wiegman, an Attorney with the Office of General Counsel at (512) 458-7236. Thank you for your attention to this matter.

Sincerely,

Robert A. MacLean, M.D.  
Acting Commissioner of Health